IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 14665 of 2006(U)

AGAINST THE ORDER IN I.A.1744/2003 IN
O.S. 236/2003 of MUNSIFF COURT, OTTAPPALAM

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PETITIONER:

NARAYANA KURUP, 72 YEARS,
S/O.VATTOLI NANIKUTTY AMMA, CHALAVAR AMSOM AND
DESOM, OTTAPPALAM TALUK.

BY ADV. SRI.E.R.VENKATESWARAN
SRI.R.SREEHARI

RESPONDENTS:

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1. VELAYUDHAN, S/O.VATTOLIKUNNATH TAPPA,
CHALAVARAS AMSOM AND DESOM, OTTAPPALAM TALUK.

2. RAMAKRISHNAN, S/O.VELAYUDHAN,
VATTOLIKUNNATH, CHALAVARA AMSOM AND DESOM,
OTTAPPALAM TALUK.

BY ADV. SRI.P.V.KUNHIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 14665 OF 2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE AFFIDAVIT DT.08.08.03 FILED IN SUPPORT OF IA NO.1744/03 IN OS NO.236/2003 OF MUNSIFF COURT, OTTAPPALAM.

EXT.P2 : TRUE COPY OF THE INTERIM REPORT DT.29.10.03 IN OS NO.236/03 OF MUNSIFF COURT, OTTAPALAM.

EXT.P3 : TRUE COPY OF THE REPORT DT.29.01.04 FILED IN IA NO.1744/03 IN OS NO.236/03 OF MUNSIFF'S COURT, OTTAPALAM & PLAN.

EXT.P4 : TRUE COPY OF THE AFFIDAVOT FILED IN SUPPORT OF THE IA NO.81/2006 IN OS NO.236/2003 OF MUNSIFF'S COURT, OTTAPALAM.

EXT.P5 : TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENTS IN IA NO.81/2006 IN OS NO.236/2003 OF MUNSIFF'S COURT, OTTAPALAM.

EXT.P6 : TRUE COPY OF THE ORDER PASSED IN IA NO.81/2006 IN OS NO.236/2003 DT.22.02.06 OF THE MUNSIFF'S COURT, OTTAPALAM.

EXT.P7 : TRUE COPY OF THE AFFIDAVIT FILED IN SUPPORT OF IA NO.966/06 IN OS NO.236/03 OF MUNSIFF'S COURT, OTTAPALAM.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 14665 OF 2006

Dated this the 9th day of July, 2007

JUDGMENT

Ext.P6 order passed by the learned Munsiff dismissing an application for setting aside the commissioner's report is under challenge in this Writ Petition. Mr.E.R.Venkiteswaran, learned counsel for the petitioner submits that after Ext.P6 order was passed, Ext.P7 application seeking a remittance of the commissioner's report has been filed for getting certain clarifications on certain aspects regarding the physical boundaries of the properties and the court below has subsequently dismissed that application also. Copy of the order dismissing the application is not placed before me. Having regard to the submissions addressed before me, I am of the view that it will not be proper to invoke the supervisory jurisdiction under Article 227 to set aside the subsequent order, copy of which is not even placed by the petitioner. But at the same time I dispose of the Writ Petition issuing the following directions:

The learned Munsiff will permit the petitioner to cite and examine the advocate commissioner as the first witness on his side in the suit. The petitioner will be permitted to adduce whatever evidence he has, to substantiate the objections he has filed to the commissioner's report and

in support of his claim for remittance of the commissioner's report under Ext.P7. Once the plaintiff compiles the evidence against the commissioner's report as indicated above, the court below will hear both sides and pass an order as to whether there is necessity for remitting the commissioner's report and thereafter only the court will continue with the trial of the suit.

After I pronounced this judgment the learned counsel for the respondent appeared before me and reported that the matter is settled. I record the above submission. In view of the above submission, the Writ Petition will stand dismissed as infructuous.

PIUS C. KURIAKOSE, JUDGE

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